

Conservation, Forests and Lands Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 states the purposes of the Act.

Clause 2 provides for the commencement of the Act.

Clause 3 contains definitions.

Clause 4 states the object of the Act.

Clause 5 provides that the Act is to bind the Crown.

PART 2—ADMINISTRATION

Division 1—Director-General

Clause 6 establishes a corporation called the Director-General of Conservation, Forests and Lands. The corporation is comprised of the person for the time being holding the office of chief administrator of the Department of Conservation, Forests and Lands.

Clause 7 makes the Director-General subject to the Minister's direction and control and obliges the Director-General to give the Minister any reports or information the Minister or Parliament requires.

Clause 8 states that the incorporation of the Director-General is not to limit any power or function that the chief administrator could have exercised prior to incorporation.

Clause 9 contains transitional provisions. It provides that the Director-General is to be the successor in law to the Forests Commission of Victoria, the Soil Conservation Authority, the Vermin and Noxious Weeds Destruction Board and the Director of Fisheries and Wildlife.

Clause 10 describes the Director-General's functions as those conferred under any law and gives power to perform those functions.

Clause 11 enables the Minister or Director-General, by a written instrument, to delegate powers functions or duties to Departmental officers or certain other persons.

Division 2—Advisory Bodies

Clause 12 enables the Minister to establish advisory committees and to appoint committee members.

PART 3—PROPERTY

Clauses 13–15 outline the Director-General's powers to acquire and dispose of land, and interests in land, including the power compulsorily to acquire land.

Clause 16 allows the Director-General to accept donations.

Clause 17 states that rights in the nature of an easement that are acquired by the Director-General are deemed to be easements even though they do not benefit any specific land of the Director-General.

PART 4—FINANCE

Division 1—Agreements and Accounting

Clases 18–19 empower the Director-General, within certain limits, to enter into contracts for the purposes of any relevant law.

Clause 20 authorises the Director-General's expenditure.

Clause 21 requires expenditure by the Director-General to be identified and accounted for.

Clause 22 establishes a Conservation, Forests and Lands Stores Suspense Account, replacing a similar account under the *Forests Act 1958*.

Clause 23 establishes a Conservation, Forests and Lands Plant and Machinery Fund replacing a similar account under the *Forests Act 1958*.

Clause 24 requires the Director-General to prepare an annual budget for the above account for the approval of the Treasurer.

Clause 25 provides for payment and expenditure of funds for road construction and maintenance purposes, replacing a similar provision under the *Forests Act*.

Clause 26 requires the Director-General to keep proper accounting records, and provides for the collection of moneys. It also requires the auditing of the Director-General's records.

Division 2—Charges and Fees

Clases 27–28 enable the Director-General to fix and recover charges and fees that have been approved by the Minister, subject to existing laws which make other provision for the setting or limiting of charges or fees.

Clases 29–30 provide for payment and recovery of charges and fees, including interest.

PART 5—CODES OF PRACTICE

Clause 31 provides for written approval of Codes of Practice by the Minister. Codes of Practice will specify practical procedures for achieving the objectives of any relevant law.

Clause 32 illustrates the sort of matters which might be the subject of a Code of Practice.

Clause 33 requires the recommendation of the Land Protection Council to be sought before the Minister exhibits a draft Code of Practice relating to the *Soil Conservation and Land Utilization Act 1958* or the *Vermin and Noxious Weeds Act 1958*.

Clause 34 states that copies of any draft Code of Practice must be given to certain persons, including affected Ministers. It also provides for the inspection of draft Codes of Practice by any person free of charge.

Clause 35 provides that the Director-General must give notice of the preparation of a draft Code of Practice to certain persons and publish the notice in a newspaper and the *Government Gazette*; it further provides that the notices must be in accordance with the regulations and also provides for failure to give notice.

Clause 36 provides that the Director-General may apply to the Minister for exemption from any of the requirements of section 35 and further provides that the Minister may exempt himself or herself from any of the requirements of section 34 or 35.

Clause 37 sub-clause (1) states that any person may make a submission about a draft Code of Practice of which notice has been given under section 35.

Clause 37 sub-clauses (2) and (3) state that the Director-General must consider all submissions and make provision for late submissions.

Clause 37 sub-clause (4) provides for decisions the Director-General must make about submissions.

Clause 38 makes provision for submissions that the Director-General submits to a panel and provides that the panel must report its findings to the Director-General.

Clause 39 states that the panel's report must be made available, at the office of the Director-General, for inspection by any person free of charge. It further provides that the Director-General must consider the panel's report.

Clause 40 states that the Director-General must advise the Minister in writing if it decides to abandon a draft Code of Practice.

Clause 41 provides that the Director-General may adopt a draft Code of Practice with or without change.

Clause 42 provides that in certain circumstances a draft Code of Practice will lapse.

Clause 43 states that the Director-General must submit an adopted Code of Practice, together with the prescribed information, to the Minister.

Clause 44 states that the Minister may direct the Director-General to give more notice.

Clause 45 provides that the Minister may direct the Director-General to give notice of any change to the adopted Code of Practice and may specify the manner and form of such notice.

Clause 46 provides that the Minister may allow any person affected by a change to an adopted Code of Practice to make a submission and further provides that the submission may be referred to a panel for consideration and report to the Minister.

Clause 47 provides for approval by the Minister of a Code of Practice.

Clause 48 makes provision for and the validity of Codes of Practice in respect of failure to comply with certain provisions of the Act. It further provides for evidence of Codes of Practice.

Clause 49 states that a revised Code of Practice prepared by the Director-General is a draft Code of Practice.

Clause 50 provides that the Director-General must publish a notice of the approval of a Code of Practice, the approval of a revision, or the revocation of a Code of Practice.

Clause 51 states that the Director-General must make approved Codes of Practice available for inspection by any person free of charge.

Clauses 52–53 make provision for the commencement and revocation of Codes of Practice.

Clause 54 enables a Code of Practice to be incorporated in a regulation.

Clause 55 states that compliance with a Code of Practice is voluntary unless compliance is required by a relevant law or it is included in a regulation or is a condition in any authority. Sub-clause (2) provides that any proposed regulation which seeks to incorporate or adopt a Code of Practice must not be submitted to the Governor in Council if each House of Parliament has resolved that the Code should not be incorporated or adopted as proposed.

PART 6—CONSERVATION WORKERS

Clause 56 contains definitions.

Clause 57 provides for evidence of the identity of conservation workers.

Clause 58 enables a person who voluntarily engages in conservation work ('a conservation worker') to obtain compensation in accordance with the *Accident Compensation Act 1985* for personal injury suffered in connection with that work. It further allows the Director-General to authorise payment of reasonable compensation for property damage incurred by such a person. These provisions are similar to those applying under the *Education Act 1958* to voluntary workers in schools.

Clauses 59–62 provide for the role of the Accident Compensation Tribunal and Accident Compensation Commission.

Clause 63 enables the Director-General to take proceedings to recover the amount of compensation paid from a third party who is liable to pay damages to a conservation worker.

Clause 64 provides for expenses to be paid from the Consolidated Fund.

Clause 65 creates an offence of making false or misleading statements in connection with any claim.

PART 7—PUBLIC AUTHORITIES

Clause 66 requires a public authority to submit to the Director-General a plan of certain works prior to their commencement so that the need for any necessary protective measures can be drawn to the authority's attention.

Clause 67 requires public authorities to comply with Codes of Practice and any comments under the previous clause except where the authority is satisfied there is no feasible and prudent alternative and all reasonable measures to minimize any adverse effect are taken. Works that require notification are listed in Schedule 3, which may be amended in accordance with clause 100. Sub-clause (2) similarly requires the Crown to comply with Codes of Practice.

PART 8—LAND MANAGEMENT CO-OPERATIVE AGREEMENTS

Clause 68 enables the Director-General, with the Minister's approval, to provide grants, loans or other assistance to land owners to encourage good land management practices or otherwise to achieve the purposes of a relevant law.

Clause 69 enables the Director-General to enter into a formal agreement with a land owner about the use or management of the land of the land owner.

Clause 70 outlines the nature of the matters that could be included in an agreement. These cover such matters as the obligation of the Director-General to provide grants, loans or assistance and how the land owner is to be accountable for their use or expenditure. Agreements may include restrictions on the use of the land or may allow access to the land by the Director-General or the public where agreed to by the land owner.

Clause 71 describes the form of an agreement and states that it is binding and to be enforceable by the parties to it.

Clause 72 provides for any rights and obligations of a land owner under an agreement to pass to the land owner's successors where such provision is made in the agreement. Provision is also made for a note of agreements of this type to appear on the Register of Titles or in the case of general law land to be registered under the *Property Law Act 1958*.

Removal of the notification of, or registration of, an agreement can be ordered by the Supreme Court in specified circumstances.

Clause 73 states that where an agreement provides for land to be a flora and fauna sanctuary it is a sanctuary for the purposes of the *Wildlife Act 1975*.

Clause 74 applies whenever the public have access to the land of a land owner under an agreement and in the absence of contrary agreement makes the Director-General responsible for public liability as if the Director-General were the occupier.

Clause 75 enables a rating authority that wishes to do so to remit all or part of the rates on land subject to an agreement.

Clause 76 allows an agreement to be varied or terminated by consent, as provided in the agreement, or by the Minister if its continuance becomes harsh or oppressive. A right of appeal to the Administrative Appeals Tribunal is provided from decisions of the Minister.

Clause 77 provides similar remedies for breach of an agreement to those available for breach of contract.

Clause 78 enables the Director-General to obtain an injunction to enforce an agreement.

Clause 79 provides for amounts due to the Director-General under the agreement to be a charge on the land until they are paid.

Clause 80 requires notice of an agreement to be published in the *Government Gazette* and a newspaper, to be displayed in a conspicuous place on the land, and for the agreement to be made available for public inspection. It further provides for the Director-General to maintain a register containing information about agreements.

Clause 81 makes it an offence for a third party to do what is prohibited by an agreement except in certain circumstances.

Clause 82 provides for the Minister to make regulations over land to which it is agreed that the public will have access but not so as to restrict the land owner's use and enjoyment of the land.

PART 9—ENFORCEMENT AND GENERAL PROVISIONS

Clause 83 provides for the appointment of authorised officers and gives them authority to enforce all provisions of any relevant law to which their authorisation extends.

Clause 84 provides a more limited form of authorisation and allows persons to be given authority to perform specified powers duties or functions that may be carried out by an authorised officer.

Clause 85 directs police officers to assist authorised officers in executing their functions when requested.

Clause 86 continues the effect of existing provisions which exclude the personal liability of authorised officers for actions they perform in good faith in executing their duties.

Clause 87 provides for evidence in legal proceedings of the place where an offence occurs, expenses incurred by the Director-General or Department, and the authenticity of maps, photographs and documents.

Clause 88 provides for evidence in legal proceedings of a number of miscellaneous matters. It deals with certification of an authorised officer, and whether and on what terms a person holds an authority. It provides for certification as to the value of property or the amount of costs and outlines the procedure for disputing the certification. It further provides for proof of the ownership or occupation of land.

Clause 89 enables the Director-General to obtain an injunction to enforce any authority or notice or the provisions of any relevant law.

Clause 90 provides for liability for offences by corporations and their officers.

Clause 91 enables an authorised officer to serve an infringement notice on a person who commits a prescribed offence against a relevant law.

Clause 92 allows the Director-General to withdraw an infringement notice and requires any penalty paid to be refunded.

Clause 93 provides for payment of penalties shown on infringement notices and prosecution for non-payment.

Clause 94 extends the traffic regulation provisions of the *Transport Act 1983* to all land under the control of the Director-General in a manner similar to that provided in section 93 (5) of that Act.

Clause 95 makes it an offence to give false or misleading information to an authorised officer.

Clause 96 makes provision for the prosecution of offences.

Clause 97 incorporates by reference the provisions of section 92 of the *Penalties and Sentences Act 1985* which empowers a Court to make compensation orders against a person convicted of an offence where damage is caused to another person. It enables compensation to be awarded for criminal damage to Crown land and things on the Crown land, property of the Director-General, and wildlife.

Clause 98 enables the Director-General to commence an action for damages following a person's contravention of a relevant law, in relation to the same matters as in the preceding clause or in any other case where the Crown could obtain damages. The section facilitates the exercise by the Crown of its rights at common law.

Clause 99 enables the Governor in Council to make regulations.

Clause 100 provides for amendment of Schedule 3 by Order in Council.

Clause 101 amends the *Magistrates (Summary Proceedings) Act 1975* to simplify the processing of infringement notices.

PART 10—TRANSITIONAL PROVISIONS

Clauses 102–103 repeal the Acts referred to.

Clause 104 amends or repeals Acts referred to in Schedule 4 to the extent expressed in that Schedule.

Clause 105 contains savings provisions concerning the Office of Director-General of Conservation, Forests and Lands.

Clauses 106–108 and *110–111* contain savings provisions consequent on the abolition of former authorities and the introduction of the title 'authorised officer'.

Clause 109 contains savings provisions about the employment of staff.

Clause 112 contains transitional provisions about accounts.

Clause 113 makes provision for continuation of the role of the landholder members on the former Soil Conservation Authority and the Vermin and Noxious Weeds Destruction Board.

Clause 114 applies the *Lands Compensation Act 1958* until the *Land Acquisition and Compensation Act 1986* comes into operation.

Clause 115 contains savings provisions relating to advances, agreements and caveats under section 94A of the *Forests Act 1958*.

Clause 116 applies the *Town and Country Planning Act 1961* until the *Planning and Environment Act 1987* comes into operation.

Clause 117 changes the title of Director of National Parks to Director of National Parks and Wildlife.

Clause 118 preserves the identity and powers of bodies even though this Act changes their constitution.

SCHEDULES

Schedule 1 contains the table of Acts which constitute relevant laws.

Schedule 2 provides for the constitution, functioning and meeting of committees.

Schedule 3 lists the matters requiring notification to the Director-General under Part 7.

Schedule 4 sets out the extent of amendments or repeals.

